

PETITION

F O R

Mr. David Dewar,

MY Lords of Council and Session, Unto your Lordships Humbly Means and Shews, Your Servitor *Mr. David Dewar*; That where *Major Arnot* by a *Real Security*, did affect the Lands of *Cunnochie*, for the principal Summ of 4000 Merks; And the *Major* being Debitor to *James Clerk* Merchant in *Edinburgh*, in the like Summ, he did adjudge from the *Majors* Son that Interest upon *Cunnochie*. And *Mr. David Dewar* did adjudge in the Name of *David French*, from the *Majors* Son, the said Interest upon *Cunnochie*, for payment of the principal Summ of a 1000 pound Scots, and be the Decreet of Ranking of *Cunnochies* Creditors, *James Clerk*, and *Mr. David Dewar*, are decerned to come in *pari passu*, their principal Summ being 6500 Merks, and has not any more for payment thereof, but the said Summ of 4000 Merks, due to the *Major* upon the Estate of *Cunnochie*, by which they will not recover their principal Summs, *Provost Drummond* being Cautioner for the said *James Clerk*, in great and considerable Summs of Money, for which the *Provost* was distressed, and his Shop pointed. And it is well known, That this Cautionrie was the Occasion of *Provost Drummonds* Ruine; And the said *James Clerk* for a part of his Relief, did Dispose to the *Provost*, the said Adjudication of *Major Arnots* Interest upon *Cunnochie*, & delivered up to him the said Adjudication, and hails Grounds & Warrands thereof; Which the *Provost* intrusted to *Mr. William Lawder* to be kept, because he was Debitor to the said *Mr. Wil. Lawder* in a small Summ. For Security whereof, the Disposition be *James Clerk* of the said Adjudication, was also well in favours of *Mr. William Lawder*, of the small Summ due to him, as it was in favours of *Provost Drummond*, for the rest of the Summs contained in the Decreet of Adjudication. Notwithstanding whereof, *James Nicolson* late Dean of Guild of *Edinburgh*, did several years thereafter, procure from the said *James Clerk*, a new Disposition to the said Adjudication, albeit he knew of the Former granted to *Provost Drummond*; And therefore, procured from Master *William Lawder*, a Lend of the said Adjudication, and Grounds and Warrands thereof, upon his obligation to redeliver the same; And *Mr. William Lawder* was necessitat to charge him with Horning before he reproduced them. *Provost Drummond* transfers the said adjudication in favours of *James Loch* Merchant in *Edinburgh*, and some others of his Creditors, albeit Dean of Guild *Nicolson* had dealt with him to Dispose it to him, and offered to him a small and inconsiderable Summ for the same; And Dean of Guild *Nicolson* being disappointed of his sinistrous, and ill designs, he then undertakes a Transaction with *Doctor Hay* his Cousin German, who had an adjudication many years posterior to *James Clerks* adjudication, and that of *Mr. David Dewars*, led in *David Frenches* name; But the Doctor had an Inhibition duly and Lawfully Execute against *Major Arnot* before contracting of the Debts contained in *James Clerks* Adjudication, and posterior to the Debt contained in *Mr. David Dewars* Adjudication, whereupon Dean of Guild *Nicolson* being the Doctors Cousin German, perswaded him *viis & modis* to Dispose his Interest to *David French* for a five Guinny peece, and then Dean of Guild *Nicolson* and *David French* entered in a Contract for an equal division of the spoil; And *David French* who had the trust of *Mr. David Dewar* and his Clients affairs, at the time when he made use of his name for the said diligence, no doubt

doubt remembering that his Decreet constituting the debt against Major *Arnots* Son was wrong Extracted, which Mr. *David* never knew of until it was quarreled, Dean of Guild *Nicolson*, and he first insisted against Mr. *David* upon that nullitie, because the Bond whereupon his Decreet of Adjudication is led, was long Prior to Doctor *Hays* Inhibition; And they prevailing against Mr. *David* upon this nullity, they would easily prevail against *Ja: Clerks* Adjudication, to which *Ja: Loch*, and some other Creditors of Provost *Drummond* has now Right, because all the Bonds whereupon *James Clerks* Adjudication is led and deduced, are all posterior to Doctor *Hays* Inhibition, and so for a five Guinnie peece, Dean of Guild *Nicolson*, and *David French* shall carrie away Major *Arnots* whole interest upon the Estate of *Cunnochie*, and Major *Arnots* true and lawfull Creditors defrauded of their just Debts, at least of so much thereof as they might have recovered be vretue of their Diligences against the Majors interest upon *Cunochie*, which will not pay them their Principal summs.

This being the true state of the affair, every word whereof is offered positively to be proven; It were beyond measure hard to sustain such unjust and fraudulent Contrivancies, especially the name of *David French*, who bought the said Plea from Doctor *Hay* after the raising and intenting of this Process, which if it had been formerly represented to your Lordships, it might have been sooner helped; But Mr. *David* was unwilling to reflect upon any Mans Credit and Reputation, until he is now forced to it, and your Lordships are humbly desired to consider whether Mr. *David* ought to have an Extract of his Decreet, conform to the Warrands lying in Process or not, especially considering that *Da: French* had not only trust at that time of his Clients affairs, but of his own, and if he be so impudent to deny it, can be proven, Besides *Da: French* assigned the Adjudication to Mr. *David*, with warrandice from his own fact and deed, and this buying of the plea from Doctor *Hay*, is a contravention of the Warrandice; And if Mr. *David* should Charge him with Horning upon the Warrandice, undoubtedly your Lordships will find it were a contravention thereof; And because it appears to stick with your Lordships, that the Bond whereupon Mr. *David*s diligence is founded, was not produced, albeit it be all lybelled, except the Clause of Registration, which is a sufficient evidence that Mr. *David* had the Bond; Yet if any scruple remain with your Lordships, Mr. *David* can produce Evidences and Testimontes that the Bond was in his hands many years before; And as to the General Charge against the Majors Son, it is so lybelled as ever a General Charge was done before, except a new fashion of lybelling be introduced.

Herefore, I beseech Your Lordships that you will allow me an Extract conform to the Warrands, as your Lordships and Predecessors has been in Use to do in the like Cases to Oothers, and particularly to My Lord Newbyth, or else to stop the Extracting of the Decreet, until I and Provost *Drummond*s Creditors be furder heard upon the Grounds, and others above represented. And Your Lordships Answer.

Petition
for
Mr. David Dewar

1696